

Nadler: Committee Approves Update of Americans with Disabilities Act

Wednesday, 18 June 2008

WASHINGTON, D.C. — Congressman Jerrold Nadler (NY-08), Chairman of the Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties, today welcomed the approval of H.R. 3195, the Americans with Disabilities Act Restoration Act of 2007 by the House Judiciary Committee. The bill, introduced by House Majority Leader Steny Hoyer (MD-5), was approved on a unanimous vote.

“The ADA needs to be updated, now more than ever,” said Rep. Nadler. “Thousands of our brave men and women in uniform are returning home with serious injuries including the loss of limbs, head trauma, and a variety of other life-altering injuries. We cannot stand by and allow them to come home to face discrimination without any legal remedy. We owe these young Americans no less, and I am hopeful that this bipartisan bill will soon become law. Anyone who has ever made a speech about supporting our troops should have a special interest in the passage of this bill.”

This legislative response was necessary to address the Supreme Court’s strict interpretation of the definition of “disability,” which has made it difficult for individuals with serious health conditions to prove that they qualify for protection from disability discrimination. The ADA Amendments Act of 2008 amends the definition of “disability” to lessen the burden that must be met in order to qualify for coverage and would also prevent courts from considering “mitigating measures” – such as a hearing aid or medication – when considering whether an individual has a disability.

Congressman Nadler’s prepared remarks for the mark-up follow:

“Thank you, Mr. Chairman.

“I want to commend you for your efforts to bring this legislation forward today. This is truly a historic moment.

“The Americans with Disabilities Act is a success story, but it is also a promise that has yet to be fulfilled. Its coverage, and its enforcement have not ensured full access to American life. I believe we have waited long enough, and we really cannot afford to let these problems go unaddressed.

“Although it often gets lost in the debate, the ADA is a civil rights bill. It is often treated as if it is something else. Perhaps that’s because, unlike many civil rights laws, this one requires people to spend money and make an effort, albeit modest, to do what is right.

"I have very little sympathy for those complaints. No business would make its customers climb a rope to make a purchase. They provide elevators, and a variety of other means, to bring customers in. Yet, when it comes to people who need other ways to enter the building, all of a sudden, it's a huge problem. That's just wrong.

"The same is true in employment. This society is poorer when it fails to take full advantage of the talents of all its members.

"If not in the name of simple decency and justice, then in the name of rational self-interest, we must ensure that the promise of the ADA is fulfilled.

"Unfortunately, the Supreme Court has gone out of its way to undermine Congress's clear intent. The Court has erected a monstrous Catch-22 in which an individual can face discrimination on the basis of an actual, past, or perceived disability, and yet be deemed not sufficiently disabled for the purpose of a legal remedy. That defies logic, reason, and the plain text of the ADA. Where in the Act does it say, as the Court has said, that "mitigating measures" must be taken into account when determining whether an individual is disabled?

"In fact, Congress said just the opposite. The report on the ADA said "[w]hether a person has a disability should be assessed without regard to the availability of mitigating measures . . . For example, a person who is hard of hearing is substantially limited in the major life activity of hearing, even though the loss may be corrected through the use of a hearing aid. Likewise, persons with impairments, such as epilepsy or diabetes which substantially limit a major life activity are covered under the first prong of the definition of disability, even if the effects if the impairment are controlled by medication."

"Somehow Congress wasn't clear enough for the Court. As a result, people with a variety of disabilities are deemed not to be disabled by the courts.

"The ADA Amendments Act, which was introduced by our distinguished Majority Leader, Mr. Hoyer, and the Gentleman from Wisconsin, Mr. Sensenbrenner, is necessary to make clear to the Court that we really meant what we said.

"This bill deals specifically with the definition of who is disabled. This is a basic, threshold question; it was never intended to be a high bar that could be used to deny protection. It

was never Congress's intent to force people to litigate over whether or not they are disabled. The question is whether you are qualified for the job and whether there was discrimination.

"This bill does not deal with whether the individual meets the requirements of the job, whether an accommodation is reasonably available, whether it is possible to make a building accessible, or any other question. Those parts of the law will remain unchanged.

"This bill would simply make clear that this law covers everyone with an actual, past, or perceived disability. These individuals will now have the opportunity to make their case.

"It makes no sense to exclude from the ADA's coverage people who suffer discrimination on the basis of a disability. The purpose of this bill is to remedy that irrational quirk in the law and return the Americans with Disabilities Act to Congress's original intent.

"This bill has broad bipartisan support, and the substitute we will consider today is the result of months of careful negotiation between disability rights advocates and the business community. It represents a compromise that takes into account the needs and concerns of all the stake holders.

"While these changes are long overdue, they are also especially timely. Thousands of our men and women in uniform are returning home with serious injuries including the loss of limbs, head trauma, damage to their vision and their hearing, and a variety of other life-altering injuries.

"We cannot stand by and allow them to come home to face discrimination without any legal remedy. Anyone who has ever made a speech about supporting our troops should have a special interest in the passage of this bill. We owe these young Americans no less.

"Mr. Chairman, I thank you for bringing this bill forward, and I urge my colleagues to give it their support.

"I yield back the balance of my time."